

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

LORETTA S. BELARDO, ANGELA TUITT-)	
SMITH, BERNARD A. SMITH, YVETTE)	
ROSS-EDWARDS, AVON CANNONIER,)	1:18-CV-00008
ANASTASIA M. DOWARD, DARYL)	
RICHARDS, EVERTON BRADSHAW,)	CLASS ACTION
RODELIQUE WILLIAMS-BRADSHAW,)	
PAMELA GREENIDGE and WINSTON)	JURY TRIAL DEMANDED
GREENIDGE, on behalf of themselves and all)	
others similarly situated,)	
Plaintiffs,)	
)	
v.)	
)	
BANK OF NOVA SCOTIA, SCOTIABANK)	
DE PUERTO RICO, INC.)	
Defendants.)	
)	

MOTION TO DISMISS SECOND AMENDED COMPLAINT

COMES NOW, the Defendants Bank of Nova Scotia and Scotiabank de Puerto Rico, Inc., by and through counsel, and move this Court to dismiss Plaintiffs' Seconded Amended Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1) and (6), for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted. This Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, which is based solely on Plaintiffs' claim under The Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605(m). Plaintiffs' fail assert any factual allegations to support the outrageous conclusion that Defendants charged insurance premiums to its customers while engaging in an elaborate scheme to conceal the inexplicable failure to procure FPI coverage. Indeed, this conclusion illogical and implausible and must be dismissed pursuant to FED. R. CIV. P. 12(b)(6). Because Plaintiffs' RESPA claim cannot survive this motion to dismiss, and it is the only basis upon which this Court may exercise its jurisdiction, then this Court must dismiss the case in its entirety.

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All of Plaintiffs' non-federal claims are based upon the same flawed allegations. Because all of the claims arise out of the same incorrect and unsupported conclusion, they all fail for failure to state a claim upon which relief may be granted and should be dismissed. This being Plaintiffs' fifth attempt to state a plausible claim¹, further amendment is clearly futile and dismissal should be with prejudice.

This Motion is supported by a Memorandum of Law, filed simultaneously herewith. A Proposed Order is also attached for the Court's consideration.

DATED: March 15, 2019

Respectfully Submitted,

DUDLEY RICH LLP

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¹ Plaintiffs' first complaint was filed on February 14, 2018, as Case No. 18-cv-00004. Plaintiffs filed a first amended complaint, on March 14, 2018, but then voluntarily dismissed the action on March 20, 2018, so that they would not need leave of court to amend again. Plaintiffs re-filed the same claims as the initial complaint in this case on March 20, 2018. [ECF 1.] When Scotiabank filed a motion to dismiss [ECF 3], instead of addressing the merits, Plaintiffs filed a First Amended Complaint (the *fourth* iteration). [ECF 5.] Scotiabank renewed its motion to dismiss. [ECF 9.] On December 28, 2018, Plaintiffs filed a motion for leave to file the SAC [ECF 28, 29], which Scotiabank opposed. [ECF 36.] The Court allowed the SAC, rendering the renewed motion to dismiss moot. [ECF 44, 51.]

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2019, I electronically filed the foregoing **MOTION TO DISMISS SECOND AMENDED COMPLAINT** with the Clerk of the Court using CM/EFC system, which will send a notification of such (NEF) to the following:

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